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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**BRIAN FIORE,**

Petitioner,

**v.**

**DWIGHT NEVEN, Warden,**

Respondent.

16-cv-00282-VC

**RESPONDENT'S CASE MANAGEMENT  
STATEMENT  
AND ORDER**

Pursuant to Civil L.R. 16-9, respondent submits this Case Management Statement.<sup>1</sup> We respectfully ask this Court to issue an order with the following directives: (1) grant petitioner's request to hold the federal habeas petition in abeyance pending exhaustion in state court; (2) order petitioner to notify the Court within 30 days after exhaustion is complete; and (3) order respondent to file a response within 60 days after that notification.

In addition, because there is no dispute about the appropriate next steps, the parties are in agreement that no appearance at a Case Management Conference on July 26, 2016, is necessary.

<sup>1</sup> Petitioner filed a Case Management Statement on July 15, 2016, before the case was assigned to a Deputy Attorney General, as the deputy who had handled this case in state court has retired. The undersigned Supervising Deputy Attorney General has now been assigned to represent respondent in this case.

On January 18, 2016, petitioner filed a timely federal habeas petition and an application to hold the petition in abeyance pending exhaustion of two issues in state court. Docs. 1, 2. Petitioner has already commenced the exhaustion process by filing a habeas petition in superior court on January 15, 2016. Doc. 2, Exh. A. Because the superior court petition tolls the statute, 28 U.S.C. § 2244(d)(2), respondent does not oppose petitioner's application to hold the mixed petition in abeyance pending exhaustion in state court.

Once the exhaustion process is completed, petitioner should be required to notify the Court within 30 days of the filing of the final state court order disposing of his claims. Respondent should then be required to file a responsive pleading, in the form of either a motion to dismiss or an answer on the merits, within 60 days of the notification. Respondent believes this will provide the most expeditious way to provide the Court with briefing in this case.

Dated: July 19, 2016

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California

/s/PEGGY S. RUFFRA  
PEGGY S. RUFFRA  
Supervising Deputy Attorney General  
Attorneys for Respondent

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**\*\*If the state court petition is not resolved within 6 months the parties must file a joint status report. The status report is due no later than January 27, 2017. The Court otherwise adopts the proposed schedule and vacates the case management conference scheduled for July 26, 2016.**

Date: July 26, 2016

